

**Serial No. 09/593,573**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<u>In Re Application of</u>	:	February 25, 2008
<u>O. Casile, et al</u>		Group Art No. 2623
<u>Serial No. 09/593,573</u>		Examiner: A.Q. Shang
<u>Filed: June 14, 2000</u>		for IBM Corporation
<u>Anne Vachon Dougherty</u>		
<u>Title: SYSTEM AND METHOD FOR THE</u>		3173 Cedar Road
<u>COORDINATION OF SHORT-TERM</u>		Yorktown Heights,
<u>CYCLIC DATA AND EPHEMERAL</u>		New York 10598
<u>CONTENT IN A BROADCAST STREAM</u>		

Board of Patent Appeals and Interferences  
Alexandria, VA 22313-1450

**APPEAL BRIEF (37 CFR 41.37)**

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the decision dated September 25, 2007 of the Examiner finally rejecting Claims 1-24 and 26 in the above-identified patent application, and respectfully request that the Board of Patent Appeals and Interferences consider the arguments presented herein and reverse the Examiner's rejection.

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**I. REAL PARTY IN INTEREST**

The appeal is made on behalf of Assignee, International Business Machines Corporation and the inventors, Olivier Casile, Richard S. Chernock, Paolo Dettori, Frank A. Schaffa, and David I. Seidman, who are real parties in interest with respect to the subject patent application.

**II. RELATED APPEALS AND INTERFERENCES**

There are no pending related appeals or interferences with respect to the subject patent application.

**III. STATUS OF CLAIMS**

There are twenty-five (25) claims pending in the subject patent application, numbered 1-24 and 26. No claims stand allowed. Claims 25 and 27-30 have been canceled. A complete copy of the claims is attached hereto.

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#### **IV. STATUS OF AMENDMENTS**

There are no unentered amendments filed after final rejection for the application.

#### **V. SUMMARY OF INVENTION**

The invention which is the subject of the remaining pending claims is a computerized method, apparatus, and program storage device for performing a method for retrieving multidimensional data from a database in response to a user query. Independent Claims 1, 9 and 18 recite the method, program storage device and system, respectively.

##### **Independent Claim 1**

Claim 1 recites a method (Figures 3A and 3B) for providing secondary content related to primary content in a broadcast stream. The method includes the steps of: obtaining secondary content which relates to the main primary content (page 11, lines 5-8; page 12, lines 13-17; page 12, line 25-page 13, line 3); creating a schedule

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(page 13, lines 4-8; steps 312 and 316 of Figs. 3A and 3B) for cyclic delivery (page 15, lines 18-20) of said secondary data content in a predetermined relation (page 15, lines 20-25) to the non-cyclic broadcasting of the primary content (steps 308 of Fig. 3A); and cyclically delivering said secondary content based on said schedule (steps 307, 310, 320 and 321 of Figs. 3A and 3B).

**Dependent Claim 2**

Claim 2 recite the method of Claim 1 wherein the scheduling comprises creating a schedule for a first delivery of said secondary content (step 307 of Fig. 3A; page 14, lines 15-18; page 15, lines 20-25; page 17, lines 22-24) prior to delivery of the primary content (step 308 of Fig. 3A) and at least one successive delivery of said secondary content after commencement of delivery of the primary content (steps 310 of Fig. 3A and steps 320 and 321 of Fig 3B).

**Dependent Claims 3 and 4**

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Claim 3 recites the method of Claim 2 further comprising dynamically modifying the schedule (step 316 of Fig. 3B).

Claim 4 recites the method of Claim 3 wherein the dynamically modifying comprises adjusting the schedule based on viewer interaction (page 15, line 25 to page 16, line 1; page 24, lines 2-4) with the secondary content.

**Dependent Claims 5, 7 and 18**

Claim 5 recites the method of Claim 1 further comprising generating at least one viewer request for retransmission automatically at viewer's equipment (page 20, lines 19-21; page 23, lines 13-14).

Claim 7 recite the method of Claim 5 wherein the automatic generating of at least one viewer request for retransmission from viewer's equipment comprises generating at least one viewer request for retransmission based on at least one of viewer profile information (page 20, lines 19-23) and viewer interaction (page 24, lines 3-4).

Claim 18 recites the method of Claim 5 further comprising selectively transmitting said at least one viewer request (page 19, lines 13-17).

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**Dependent Claims 6, 8 and 10**

Claim 6 recites the method of Claim 5 further comprising receiving said at least one viewer request for retransmission (step 313 of Fig. 3B) of the secondary content and responding to said at least one viewer request (page 18, line 25 to page 19, line 3; page 20, lines 20-21; page 22, line 23-page 23, line 2; page 23, lines 13-24; step 316 and steps 320 and 321 of Fig. 3B).

Claim 8 recites the method of Claim 6 wherein responding to at least one viewer request for retransmission comprises rebroadcasting the secondary content (step 321 and page 23, line 5).

Claim 10 recites the method of Claim 6 wherein said responding to said at least one viewer request comprises narrowcasting the secondary content (page 6, lines 22-23; page 23, lines 8-12 and step 320 of Fig. 3B).

**Dependent Claims 9**

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Claim 9 recite the method of Claim 8 further comprising counting the number of viewer requests for retransmission of secondary content (page 6, lines 18-23; page 23, lines 2-5; page 24, line 25-page 25, line 1; steps 314 and 315 of Fig. 3B) and wherein said rebroadcasting is conducted upon receipt of a threshold number of viewer requests for retransmission (page 25, lines 1-3, step 316 at Fig. 3B).

**Dependent Claim 11**

Claim 11 recites the method of Claim 1 additionally comprising displaying notification data for notifying the viewer of said delivering of secondary content (page 16, lines 3-9).

**Dependent Claims 16 and 17**

Claim 16 recites the method of Claim 1 additionally comprising providing control information with said secondary content (page 16, line 23 through page 17, line 24).

Claim 17 recites the method of Claim 16 wherein providing control information comprises including at least

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one of a unique identifier for said secondary content (page 17, lines 14-15), an identification of said primary content to which the secondary content pertains (page 17, lines 2-5), scheduling information for future broadcasting of secondary content (page 9, lines 16-18), and timing information regarding relating said secondary content to said primary content (page 10, lines 2-7; page 17, lines 22-24).

**Independent Claim 19**

Claim 19 recites a system (Figure 1 and page 10, lines 9-20) for providing secondary content related to primary content in a broadcast stream. As claimed, the system includes an authoring station (113 of Fig. 1; page 10, lines 11-13; page 13, lines 4-8) for creating a schedule for cyclic delivery of said secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content (page 15, line 20-page 16, line 2); and a broadcast component (111 of Fig. 1; page 10, lines 16-20) for cyclically delivering said secondary content based on said scheduling.



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**Dependent Claim 20**

Claim 20 recites the system of Claim 19 wherein the broadcast component (111 of Fig. 1) further comprises means (112 and page 10, lines 13-20) for generating at least one additional retransmission of said secondary content (page 15, lines 18-20) in response to at least one request (page 15, line 25-page 16, line 2 and page 23, lines 2-12).

**Independent Claim 24**

Claim 24 recites the apparatus at a viewer location (100 of Fig. 1) for providing display of primary content and secondary content related to said primary content that has been received from a broadcast location. The apparatus (100) comprises a receiving component (115 of Fig. 1; page 11, lines 19-22; page 14, lines 1-4) for receiving an input stream from said broadcast location; a processing component (117 of Fig. 1; page 11, line 24 to page 12, line 3) for identifying cyclic secondary content in said input stream (page 14, lines 4-8; page 16, lines 10-12) and for handling said secondary content (page 14, lines 8-14); at least one buffer location (storage 118; page 12, lines 9-11) for receiving said secondary content of said input stream from

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said processing component and for buffering said secondary content; and a display component (monitor 116; page 14, lines 3-4) for displaying said primary content from said input stream and for receiving said secondary content from said at least one buffer location and displaying said secondary content. The claim further recites that the processing component comprises means for extracting control information from said input stream (page 16, lines 10-17) and for handling said secondary content based on said control information (page 16, lines 15-17 and 23-24; page 17, line 6; page 17, lines 11-13; page 17, lines 19-24; page 18, lines 10-13; page 18, line 18-page 19, line 3).

**Dependent Claim 26**

Claim 26 recites the apparatus of Claim 24 additionally comprising a request component for generating a request for retransmission of said secondary content from said broadcast location (117; page 18, lines 23-24).

**VI. GROUND OF REJECTION TO BE REVIEWED**

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The Examiner states that "Claims 1-2, 12-13, 16-17 and 19 are rejected under 35 USC 102(e) as being anticipated by **Fries (6,317,885)**."

The Examiner cited passages of the Fries patent against all of the pending claims, without stating a United States Code section under which Claims 3-11, 15, 18, 20-24 and 26 have been rejected. Clarification of the rejections, in the form of a non-Final action, was expressly requested of the Examiner in the Response filed on July 9, 2007. The request was neither addressed nor granted.

Appellants will address the rejection of all claims as if expressly rejected as anticipated by the United States Patent number 6,317,885 of Fries (hereinafter "Fries").

## **VII. ARGUMENT**

### **Independent Claim 1**

Claim 1 has been rejected as anticipated by Fries. Claim 1 recites a method for providing secondary content related to primary content in a broadcast stream. The method includes the steps of: obtaining secondary content

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which relates to the main primary content; creating a schedule for cyclic delivery of the secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content; and cyclically delivering said secondary content based on said schedule.

The Fries patent is directed to an interactive entertainment and information system which uses existing digital cable television set-top boxes (see: Abstract). Under Fries, interactive pages of video information are periodically provided from a head-end of a television system to a user's set-top box by injecting the video information into a transmission medium (Col. 2, lines 19-21). The pages of video information contain active areas for user input. Based on user input to an interactive area of a displayed page, new pages may be displayed (Col. 2, lines 28-33). A carousel delivery application at the Fries information service server delivers HTML page images to the set-top box along with meta-data for each page (Col. 4, lines 18-20). The meta-data for each page "describe the structure and contents of the page image" (Col. 4, lines 23-24).

In rejecting Claim 1, the Examiner has combined the language of Claims 1 and 19, citing one figure and a series of lengthy passages against both the components (Claim 19)

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and the method steps (Claim 1). Appellants respectfully contend that the rejection lacks specificity, making it unduly burdensome on the Appellants to comprehend and respond to the grounds for rejection. Appellants contend that the Examiner should have shown how specific teachings of the Fries patent anticipate each claim feature and believe that the rejections should be overturned. Nonetheless, Appellants will present the Arguments independently for Claims 1 and 19 in a best effort to demonstrate the patentability of the claim features over the teachings of the Fries patent.

The Examiner states, on page 3 of the Final Office Action, that Fries discloses "Obtaining (Head end 'HE' 22) secondary content which relates to the main primary content, citing Col. 4, lines 4-55. Appellants first note that the Examiner has, here and throughout the rejection, cited lengthy passages from the Fries patent and not particular teachings which supposedly anticipate the claim language. In the lengthy passage from Col. 4, Fries teaches that the primary function of the head-end server is "to receive and store page data and carousel management information from content providers, and then to inject the page images onto the local cable system" (Col. 4, lines 4-8). The server

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"typically will regularly download at least some of the page image data from an external data source 48 such as the Internet". The foregoing neither teaches nor suggests "obtaining of secondary content which relates to the main primary content" since there is no teaching or suggestion that the Fries page information relates to primary content being delivered over the cable system. Appellants reiterate that, without specific rejections by the Examiner, it is unclear what teachings are being related to what claim features. For example, it is unclear if the Examiner is analogizing the meta-data to secondary content with respect to the primary content page image data, or if the Examiner is considering the page image data to be secondary content with respect to the primary cable broadcasts being delivered from the head-end server.

In Column 4, Fries further teaches that the server delivers "rendered HTML page images...along with meta-data for each page" wherein the "meta-data for each page describe the structure and contents of the page image" (Col. 4, lines 17-24). While it can be concluded that the Fries meta-data relates to the HTML page images, such is not the same as obtaining and delivering secondary content which relates to the primary content in the broadcast. The primary Fries

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content is the cable programming. There is nothing in the cited Column 4 passages (from lines 4-55) that teaches or suggests that the HTML page images being sent by the server relate to Fries' primary cable programming. Further, there is nothing that teaches or suggests that the meta-data relates to the Fries' primary cable programming. All Fries teaches is that the system injects page images "onto the local cable system" (Col. 4, lines 7-8).

Against the claims authoring system, the Examiner cites the Fries Carousel Server 46, citing "figs. 2 10-12" (see: FOA page 4, line 6). Appellants respectfully note that Fig. 2 does not include reference numerals 10-12, nor do any of the Fries figures include reference numerals 10-12. Fig. 2 does have carousel 50 as a component in information server 46, however, there is nothing in Fig. 2 which illustrates the step of creating a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content or the step of cyclically delivering the secondary content based on the schedule.

The Examiner cites a passage from Col. 8, lines 13-25 in which Fries teaches that, if a user doesn't select an image on a page, "it is possible for the page image to be updated

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at a frequency equal to the maximum initial latency of the carousel". Appellants respectfully assert that sending a new page with updated information is not the same as or suggestive of a step of creating a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content or a step of cyclically delivering the secondary content based on the schedule as is expressly claimed.

The cited Fries passage also teaches that "a frequently accessed page may be placed in the carousel 50 more than once at spaced-apart locations to reduce the latency for that page". Accordingly, Fries is teaching caching of a frequently accessed page for rapid delivery. Fries is not teaching or suggesting that the page be sent to any one user location more than one time. Fries is teaching that it be cached to be readily available for delivery to a user upon receipt of user selection input requesting that page. As explicitly taught by Fries, a page may be placed in the carousel multiple times for "providing a maximum latency of approximately four seconds for that page". Note that Fries is reducing latency for that page not increasing the number of times (i.e., cyclic delivery) that the page is sent.



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The Examiner next cites the passage from Col. 9, line 33-Col. 10, line 46. The cited passage describes steps for the browser to display the received Fries content. The browser "references meta-data associated with that page to determine the page group to which that page belongs, and the digital channel corresponding thereto". Again, Appellants contend that Fries is not teaching or suggesting that a delivery schedule is being created or that secondary content is being cyclically delivered to the browser in a predetermined relation to the non-cyclic delivery of primary content.

The cited passage from Col. 11, line 59 through Col. 12, line 58 describes a "server-side slideshow" for sequentially displaying a series of still images. The server "inserts a new page image in place of the old with each new cycle of the carousel 50" (Col. 12, lines 24-25). Sequential display of different pages is not the same as or suggestive of creating a schedule for and performing a step of cyclic delivery of the same secondary content.

The Examiner has further cited teachings from Col. 13, line 59 through Col. 15, line 32. The cited Fries teachings detail a user purchase interaction which may involve storing the pages in the set-top box for later retrieval by polling.

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Polling a set-top box for stored user input is not the same as or suggestive of a step of creating a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content or a step of cyclically delivering the secondary content based on the schedule.

The Examiner has cited a passage from Col. 19, line 30-Col. 20, line 22. That Fries passage describes how Fries maps image pages to a channel, wherein there is a one-to-one mapping between a page group and a digital channel and a nine-to-one mapping between carousel pages and digital channels (see: Col. 9, lines 39-42 and Col. 19, lines 30-32). Mapping an image page to a digital channel for delivery is not the same as or suggestive of creating a schedule for cyclic delivery of the same secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content or the step of cyclically delivering that secondary content based on the schedule.

The Examiner newly cited Col. 34, lines 13-36 against the language of Claim 1. The teachings found in Col. 34, from lines 13-19 teach that the carousel may be replaced by a program that "selectively injects the pages into the

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transport stream...based on statistical information such as page popularity" whereby the "maximum latency for a given page can thus be controlled". Again, Appellants contend that Fries is not cyclically delivering the same content to a user, but is providing more frequent caching (local caching in the non-carousel embodiment) for decreased page display latency.

Anticipation under 35 USC 102 is established only when a single prior art reference discloses each and every element of a claimed invention. See: In re Schreiber, 128 F. 3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F. 3d 1475, 1478-1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F. 2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F. 2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Since Fries does not teach or suggest creating a schedule for cyclic delivery of secondary content in a predetermined relation to the non-cyclic delivery of primary content or cyclically delivering said secondary content based on said schedule, it cannot be maintained that Fries anticipates the invention as claimed in independent method Claim 1 or in the claims, Claims 2-18, which depend therefrom and add limitations thereto. Accordingly,

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Appellants request that the Examiner's rejections of Claims 1-18 be overruled.

**Dependent Claim 2**

Claim 2 recites the method of Claim 1 wherein the scheduling comprises creating a schedule for a first delivery of said secondary content prior to delivery of the primary content and at least one successive delivery of said secondary content after commencement of delivery of the primary content.

Insofar as the subject claim depends from the previously discussed claim, and necessarily includes the limitations of the claim from which it depends, arguments in support of the previously-defended claim limitations will not be repeated herein.

The Examiner again generally cites lengthy passages without pointing to particular teachings as anticipating the claim language. The Examiner cites Col. 11, line 59-Col. 12, line 58; Col. 13, line 59-Col. 15, line 32 and Col. 19, line 30-Col. 20, line 22. All of the cited passages were cited against the language of independent method Claim 1

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(and independent apparatus Claim 19 as further detailed below). As discussed above, none of the cited passages includes any teachings which anticipate the claimed steps of obtaining secondary content which relates to the main primary content being delivered in the broadcast stream, creating a schedule for cyclic delivery of secondary content in a predetermined relation to the non-cyclic broadcasting of the primary content, or cyclically delivering secondary content based on the created schedule.

Appellants further contend that the cited passages make no mention of creating a schedule for first delivering secondary content prior to delivery of the primary content and then successively delivering the secondary content at least once after commencement of delivery of the primary content. Fries caches page images to reduce the latency required for delivery of a given page image, but does not teach or suggest the creation of a schedule for delivery of the given page image in the claimed relationship to delivery of primary content in the Fries cable broadcast.

Accordingly, it cannot be concluded that Fries anticipates the language of Claim 2. Appellants request reversal of the Examiner's rejection of Claim 2.

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**Dependent Claims 3 and 4**

Claim 3 recites the method of Claim 2 further comprising dynamically modifying the created schedule.

Claim 4 recites the method of Claim 3 wherein the dynamically modifying comprises adjusting the schedule based on viewer interaction with the secondary content.

Insofar as the subject claims depend from previously discussed claims, and necessarily include the limitations of the claims from which they depend, arguments in support of the previously-defended claim limitations will not be repeated herein.

The Examiner groups Claims 3-10 and rejects them all using a listing of Fries passages including Col. 4, lines 4-28 (newly cited and further discussed below); Col. 8, lines 13-25 (previously cited and discussed above); Col. 11, line 59-Col. 12, line 58 (previously cited and discussed above); Col. 13, line 58-Col. 15, line 21 (previously cited and discussed above); Col. 22, line 52-Col. 23, line 3 (newly

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cited and discussed below) and Col. 33, line 19-Col. 34, line 36 (overlapping previously cited passage). Appellants reiterate that the rejections lack specificity and contend that the Examiner should have shown how specific teachings of the Fries patent anticipate specific claim features.

With specific reference to the language of Claim 3, Appellants contend that the previously-discussed Fries passages do not include any teachings of creating a delivery schedule or of dynamically modifying a delivery schedule. The passage from Col. 4, lines 4-28 generally describes the function of the head-end server "to receive and stores page data and carousel management information from content providers, and then to inject the page images onto the local cable system, i.e., produce a real-time carousel data-stream". The passage also states that "the carousel 50 of page images and meta-data are delivered to a client set-top box 28 as a standard MPEG2 Transport Stream, broadcast in-based over a six MHz NTSC channel." There is nothing in the cited passage which teaches or suggests dynamic modification of a created schedule for cyclic delivery of secondary content with non-cyclic delivery of primary content (Claim 3) or adjusting the schedule based on viewer interaction with the secondary content (Claim 4).

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The Examiner cites a passage from Col. 8, lines 13-25 in which Fries teaches that, if a user doesn't select an image on a page, "it is possible for the page image to be updated at a frequency equal to the maximum initial latency of the carousel". Appellants respectfully assert that sending a new page with updated information at a carousel latency frequency is not the same as or suggestive of a step of dynamically modifying a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content (Claim 3) or a step of adjusting the schedule based on viewer interaction with the secondary content (Claim 4). Sending new content is not cyclic delivery of the secondary content. Further, sending the new information based on a latency interval is not dynamic modification of a schedule for cyclic delivery. Finally, sending the new information at a latency interval when user input to page image information, which the Examiner may be analogizing to primary content, has not been received is not the same as or suggestive of dynamically modifying a schedule of cyclic delivery based on viewer interaction with secondary content.

The cited Col. 8 passage also teaches that "a frequently accessed page may be placed in the carousel 50



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more than once at spaced-apart locations to reduce the latency for that page". Accordingly, Fries is teaching caching of a frequently accessed page for rapid delivery. Fries is not teaching or suggesting that the page be sent to any one user location more than one time. Fries is teaching that the page image information be cached to be readily available for delivery to a user upon receipt of user selection input requesting that page. As explicitly taught by Fries, a page may be placed in the carousel multiple times for "providing a maximum latency of approximately four seconds for that page". Note that Fries is reducing latency for that page not dynamically updating a schedule for cyclic delivery of that page (Claims 3 and 4). Further, while expected or historical demand for a page is relevant to the caching of the page in the Fries carousel, there is no updating of a cyclic delivery schedule based on actual viewer interaction with the secondary content (Claim 4).

The cited passage from Col. 11, line 59 through Col. 12, line 58 describes a "server-side slideshow" for sequentially displaying a series of still images. The server "inserts a new page image in place of the old with each new cycle of the carousel 50" (Col. 12, lines 24-25). Sequential display of different pages is not the same as or

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suggestive of dynamically modifying a schedule for and performing a step of cyclic delivery of the same secondary content.

The Examiner has again cited teachings from Col. 13, line 59 through Col. 15, line 32. The cited Fries teachings detail a user purchase interaction which may involve storing the pages in the set-top box for later retrieval by polling. Polling a set-top box for stored user input is not the same as or suggestive of dynamically modifying a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content (Claims 3 and 4) or a step of modifying the schedule based on viewer interaction with the secondary content (Claim 4).

The Examiner has cited Col. 22, line 52-Col. 23, line 3 against Claims 3-10. The cited passage describes modifying the carousel description by page update messages, whereby new pages are inserted into the carousel, when a user selects a link. The passage further teachings that a new carousel must be built (Col. 22, lines 59-60) when page change each cycle. Appellants reiterate that providing new pages is not the same as or suggestive of cyclic delivery of the same secondary content. Appellants further contend that

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neither updating carousel page information nor building a new carousel is the same as dynamically modifying a schedule for cyclic delivery of the same secondary content information (Claims 3 and 4).

The Examiner finally cites Col. 33, line 19-Col. 34, line 36 against the language of Claims 3-10. The teachings found in Col. 33 detail the one way cable e-mail function that can be exploited for a viewer of the Fries patent to interact with page images and a possible audio buffering scheme to load audio page information at a viewer/listener location. Nothing in the cited passages teaches or suggests dynamic modification of a schedule for cyclic delivery of secondary content. The cited passage from Col. 34, as discussed above teaches that the carousel may be replaced by a program that "selectively injects the pages into the transport stream...based on statistical information such as page popularity" whereby the "maximum latency for a given page can thus be controlled". Again, Appellants contend that Fries is not dynamically changing a schedule for cyclic delivery of the same content to a user, but is providing more frequent caching (local caching in the non-carousel embodiment) for decreased page display latency.

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Appellants respectfully assert that the cited passages do not teach or suggest the features of Claims 3 and 4 and respectfully request reversal of the Examiner's rejections.

**Dependent Claims 5, 7 and 18**

Claim 5 recites the method of Claim 1 further comprising generating at least one viewer request for retransmission automatically at viewer's equipment.

Claim 7 recite the method of Claim 5 wherein the automatic generating of at least one viewer request for retransmission from viewer's equipment comprises generating at least one viewer request for retransmission based on at least one of viewer profile information and viewer interaction.

Claim 18 recites the method of Claim 5 further comprising selectively transmitting said at least one viewer request.

Insofar as the subject claims depend from previously discussed claims, and necessarily include the limitations of the claims from which they depend, arguments in support of the previously-defended claim limitations will not be repeated herein.

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The Examiner lumps the rejections of Claims 5 and 7 into the rejection of "Claims 3-10" and states that "Claim 18 is met as previously discussed with respect to claims 3-10." All of the cited passages have been discussed in detail above. None of the cited passages teaches generating a viewer request for retransmission. Fries provides for latency-based updating of page images, but does not teach or suggest that a viewer location automatically generates a viewer request for retransmission of secondary content (Claims 5, 7 and 18), that a request for retransmission be automatically generated based on user profile information and viewer interaction (Claim 7), or that a request for retransmission be selectively transmitted (Claim 18).

Accordingly, Appellants request that the rejections of Claims 5, 7 and 18 be overturned.

**Dependent Claims 6, 8 and 10**

Claim 6 recites the method of Claim 5 further comprising receiving said at least one viewer request for retransmission of the secondary content and responding to said at least one viewer request.

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Claim 8 recites the method of Claim 6 wherein responding to at least one viewer request for retransmission comprises rebroadcasting the secondary content.

Claim 10 recites the method of Claim 6 wherein said responding to said at least one viewer request comprises narrowcasting the secondary content.

Insofar as the subject claims depend from previously discussed claims, and necessarily include the limitations of the claims from which they depend, arguments in support of the previously-defended claim limitations will not be repeated herein.

The Examiner lumps the rejections of Claims 6, 8 and 10 into the rejection of "Claims 3-10". All of the cited passages have been discussed in detail above. None of the cited passages teaches receiving the at least one viewer request for retransmission of secondary content and responding to the at least one viewer request (Claims 6, 8 and 10), responding by rebroadcasting the secondary content (Claim 8) or responding by narrowcasting the secondary content (Claim 10). Fries provides for sending new (i.e., successive linked) page image data in response to user input to links on currently displayed page images (Abstract; Col. 8 lines 57-60; Col. 11, lines 27-28) and sending updated

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page image data in response to user input (Col. 9, lines 18-21). However, the sending of new page images or the updating of current page images in response to user input does not teach or suggest retransmission of the same secondary content in response to viewer requests for retransmission. Further, Fries provides for so-called "automatic hyperlinks" (Col. 11, lines 51-54) which display a linked page if no input has been received over a predefined delay period. Clearly sending new data from the server end based on user input or lack thereof does not anticipate viewer requests for retransmission of same secondary content automatically generated from viewer locations.

Appellants request reversal of the rejections of Claims 6, 8 and 10.

**Dependent Claims 9**

Claim 9 recite the method of Claim 8 further comprising counting the number of viewer requests for retransmission of secondary content and wherein rebroadcasting is conducted upon receipt of a threshold number of viewer requests for retransmission.

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Insofar as the subject claim depends from previously discussed claims, and necessarily includes the limitations of the claims from which it depends, arguments in support of the previously-defended claim limitations will not be repeated herein.

Claim 9 has also been included in the lump rejection of Claims 3-10. No specific teachings have been cited against the counting of a number of viewer requests for retransmission of secondary content. As noted above, Fries does not teach that requests for retransmission are generated by the viewer location in the Fries system. Viewers may request new page images based on selection of links on currently-displayed page images (Abstract), but there is nothing in the cited passages that teaches or suggests counting retransmission requests for same secondary data from viewers and rebroadcasting of the same secondary content upon receipt of a threshold number of viewer requests for retransmission.

Based on the foregoing arguments, Appellants request reversal of the rejection of Claim 9.

**Dependent Claim 11**



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Claim 11 recites the method of Claim 1 additionally comprising displaying notification data for notifying the viewer of said delivering of secondary content.

Insofar as the subject claim depends from Claim 1 which has previously been discussed and necessarily includes the limitations of the claims from which it depends, arguments in support of the previously-defended claim limitations will not be repeated herein. Appellants reiterate that Fries does not anticipate the language of Claim 1.

The Examiner cites Col. 15, lines 22-32 against Claim 11. The cited passage teaches that, when a Fries user makes a purchase by providing input to displayed page images, an e-mail confirmation can be sent to the address of the user's set-top box. The sending of an e-mail confirmation is not the same as or suggestive of notifying the viewer of the delivery of secondary content in conjunction with the steps of obtaining secondary content which relates to the primary content, creating a schedule for cyclic delivery of the secondary content in a predetermined relation to the non-cyclic broadcasting of the primary content and cyclically delivering the secondary content based on the schedule.

Claim 11 has also been rejected based on the teachings found in Col. 33, line 19-Col. 34, line 36. Appellants have

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already analyzed the content of the cited passages.

Appellants respectfully contend that there is nothing in the cited passages that teaches or suggests displaying notification to the user of cyclic delivery of secondary content. The Fries use of a one way e-mail capability does not teach or suggest the notification to a user of cyclic delivery of secondary content in conjunction with the additional claim features of Claim 1 as argued above. Accordingly, Appellants request reversal of the rejection of Claim 11.

**Dependent Claims 16 and 17**

Claim 16 recites the method of Claim 1 additionally comprising providing control information with said secondary content and Claim 17 recites the method of Claim 16 wherein providing control information comprises including at least one of a unique identifier for said secondary content, an identification of said primary content to which the secondary content pertains, scheduling information for future broadcasting of secondary content and timing information regarding relating said secondary content to said primary content.

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Insofar as the subject claims depend from previously discussed claims, and necessarily include the limitations of the claims from which they depend, arguments in support of the previously-defended claim limitations will not be repeated herein.

With respect to Claim 16, the Examiner states that "Claims 14-16 are met as previously discussed with respect to Claim 1". Appellants respond in kind, noting that the arguments set forth above clearly established that the Fries patent does not anticipate the language of Claim 1 or of the claims that depend therefrom and add limitations thereto.

Furthermore, none of the cited passages from Fries teaches sending additional control information with secondary content. As discussed above, the Examiner has not clearly indicated whether standard cable broadcasts are the primary content, with page images being the secondary content, or if the page images are the primary content with the meta-data being the secondary content. Regardless of how the Examiner is interpreting the Fries teachings, Fries does not anticipate the invention as claimed. If the Examiner is analogizing the cable broadcasts to the primary content, there is nothing in Fries that teaches or suggests

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obtaining the page image data which relates to the primary content, creating a schedule for cyclic delivery of the page images with the cable broadcast, cyclically delivering the page images with the cable broadcasts, or providing control information with the secondary content. Alternatively, if the Examiner is analogizing the page images to the primary content and the meta-data to the secondary content, there is nothing in Fries that teaches or suggests obtaining the meta-data which relates to the page images, creating a schedule for cyclic delivery of the meta-data during non-cyclic delivery of the page images, or cyclically delivering the meta-data with the non-cyclic delivery of page images. Further, there is nothing in the cited passages that teaches or suggests providing control information with the meta-data (Claim 16) or of providing control information by including at least one of a unique identifier for said secondary content, an identification of said primary content to which the secondary content pertains, scheduling information for future broadcasting of secondary content and timing information regarding relating said secondary content to said primary content (Claim 17).

In rejecting Claim 17, the Examiner cites Col. 3, lines 22-65, Col. 13, line 59 to Col. 15, line 32 and Col. 33,

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line 19 to Col. 34, line 36. The passages from Col. 13, line 59 to Col. 15, line 32 and Col. 33, line 19 to Col. 34, line 36 have been analyzed thoroughly above. Appellants respectfully assert that there is nothing in those passages that teaches providing control information along with secondary content being cyclically delivered and relating to a unique identifier for the secondary content, an identification of the primary content to which the secondary content pertains, scheduling information for future broadcasting of secondary content and timing information regarding relating secondary content to primary content. Fries may use unique identifier and may associate meta-data to page images, but Fries does not provide same as control information with secondary content in the method as claimed. Appellants rely on the analysis and arguments set forth above in support of the foregoing conclusion.

The cited passage from Col. 3 provides a description of some of the server components for modulating signals for transmission along the digital channels of the cable. There is no mention of providing a unique identifier, an identification of said primary content to which transmitted content pertains, scheduling information for future broadcasting of secondary content, or timing information

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regarding relating said transmitted to other content. Clearly, therefore, the cited passage does not anticipate the invention as claimed.

Appellants request reversal of the rejections of Claims 16 and 17.

**Independent Claim 19**

Claim 19 recites a system for providing secondary content related to primary content in a broadcast stream. As claimed, the system includes an authoring station for creating a schedule for cyclic delivery of said secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content; and a broadcast component for cyclically delivering said secondary content based on said scheduling.

The Examiner rejected Claim 19 with Claim 1, as discussed above. Appellants respectfully contend that the rejection lacks specificity, making it unduly burdensome on the Appellants to comprehend and respond to the grounds for rejection. Appellants reiterate that the Examiner should have shown how specific teachings of the Fries patent

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anticipate each claim feature and believe that the rejections should be overturned.

Against the claims authoring system, the Examiner cites the Fries Carousel Server 46, citing "figs. 2 10-12" (see: FOA page 4, line 6). Appellants reiterate that Fig. 2 does not include reference numerals 10-12, nor do any of the Fries figures include reference numerals 10-12. Fig. 2 does have carousel 50 as a component in information server 46, however, there is nothing in Fig. 2 which illustrates an authoring station for creating a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content or the step of cyclically delivering the secondary content based on the schedule.

The Examiner cites a passage from Col. 8, lines 13-25 in which Fries teaches that, if a user doesn't select an image on a page, "it is possible for the page image to be updated at a frequency equal to the maximum initial latency of the carousel". Appellants respectfully assert that a carousel sending a new page with updated information is not the same as or suggestive of authorizing means for creating a schedule for cyclic delivery of secondary data content in a predetermined relation to the non-cyclic broadcasting of the

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primary content or a step of cyclically delivering the secondary content based on the schedule as is expressly claimed.

The cited Fries passage also teaches that "a frequently accessed page may be placed in the carousel 50 more than once at spaced-apart locations to reduce the latency for that page". Accordingly, Fries is teaching caching of a frequently accessed page for rapid delivery. Fries is not teaching or suggesting an authoring tool for creating a delivery schedule for a page to be sent to any one user location more than one time. Fries is teaching that a page be cached to be readily available for delivery to a user upon receipt of user selection input requesting that page. As explicitly taught by Fries, a page may be placed in the carousel multiple times for "providing a maximum latency of approximately four seconds for that page". Fries is not teaching a component for creating a delivery schedule.

The Examiner next cites the passage from Col. 9, line 33-Col. 10, line 46. The cited passage describes steps for the browser to display the received Fries content. The browser "references meta-data associated with that page to determine the page group to which that page belongs, and the digital channel corresponding thereto". Again, Appellants



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contend that Fries is not teaching or suggesting an authoring station for creating a delivery schedule or a broadcast component for cyclically delivering content to the browser in a predetermined relation to non-cyclic delivery of primary content.

The cited passage from Col. 11, line 59 through Col. 12, line 58 describes a "server-side slideshow" for sequentially displaying a series of still images. The server "inserts a new page image in place of the old with each new cycle of the carousel 50" (Col. 12, lines 24-25). A component for inserting page images for sequential display of different pages is not the same as or suggestive of means for creating a schedule for and broadcast means for cyclically delivering the same secondary content based on the scheduling.

The Examiner has further cited teachings from Col. 13, line 59 through Col. 15, line 32. The cited Fries teachings detail a user purchase interaction which may involve storing the pages in the set-top box for later retrieval by polling. Means for polling a set-top box storage location for stored user input is not the same as or suggestive of an authoring station for creating a schedule for cyclic delivery of secondary data content in a predetermined relation to the

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non-cyclic broadcasting of the primary content or broadcast means for cyclically delivering the secondary content based on the schedule.

The Examiner has cited a passage from Col. 19, line 30-Col. 20, line 22. That Fries passage describes how Fries maps image pages to a channel, wherein there is a one-to-one mapping between a page group and a digital channel and a nine-to-one mapping between carousel pages and digital channels (see: Col. 9, lines 39-42 and Col. 19, lines 30-32). Mapping means for mapping an image page to a digital channel for delivery is not the same as or suggestive of an authoring tool for creating a schedule for cyclic delivery of the same secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content or the broadcast means for cyclically delivering that secondary content based on the schedule.

The Examiner newly cited Col. 34, lines 13-36 against the language of Claim 19. The teachings found in Col. 34, from lines 13-19 teach that the carousel may be replaced by a program that "selectively injects the pages into the transport stream...based on statistical information such as page popularity" whereby the "maximum latency for a given page can thus be controlled". Fries is not cyclically

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delivering the same content to a user, but is providing more frequent caching (local caching in the non-carousel embodiment) for decreased page display latency. Clearly Fries is not teaching an authoring station for creating a schedule for cyclic delivery of secondary content in a predetermined relation to the non-cyclic broadcasting of primary content or a broadcasting component for cyclically delivering secondary content based on the schedule.

Appellants reiterate that anticipation under 35 USC 102 is established only when a single prior art reference discloses each and every element of a claimed invention. See: In re Schreiber, 128 F. 3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F. 3d 1475, 1478-1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F. 2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F. 2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Since Fries does not teach or suggest means for creating a schedule for cyclic delivery of secondary content in a predetermined relation to the non-cyclic delivery of primary content and for cyclically delivering said secondary content based on said schedule, it cannot be maintained that Fries anticipates the invention as claimed in independent method

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Claim 19 or in the claims, Claims 20-23, which depend therefrom and add limitations thereto. Accordingly, Appellants request that the Examiner's rejections of Claims 19-23 be overruled.

**Dependent Claim 20**

Claim 20 recites the system of Claim 19 wherein the broadcast component further comprises means for generating at least one additional retransmission of said secondary content in response to at least one request.

Insofar as the subject claim depends from the previously discussed Claim 19, and necessarily includes the limitations of the claims from which it depends, arguments in support of the previously-defended claim limitations will not be repeated herein. Appellants further note that the Examiner stated that "Claim 20 is met as previously discussed with respect to claims 3-10". Appellants rely on the arguments submitted above with respect to the passages cited against Claims 19 and Claims 3-10 and conclude that the Fries patent does not anticipate the additionally recited means for generating at least one additional retransmission in response to a viewer retransmission

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request. Fries neither teaches nor suggests viewers generating retransmission requests, let alone means for generating and transmitting responses thereto. Reversal of the rejection of Claim 20 is respectfully requested.

**Independent Claim 24**

Claim 24 recites the apparatus at a viewer location for providing display of primary content and secondary content related to the primary content that has been received from a broadcast location. The apparatus comprises a receiving component for receiving an input stream from said broadcast location; a processing component for identifying cyclic secondary content in said input stream and for handling said secondary content; at least one buffer location for receiving said secondary content of said input stream from said processing component and for buffering said secondary content; and a display component for displaying said primary content from said input stream and for receiving said secondary content from said at least one buffer location and displaying said secondary content. The claim further recites that the processing component comprises means for extracting control information from said input

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stream and for handling said secondary content based on said control information.

The Examiner has cited the Fries set-top box, illustrated in Fig. 3, and the teachings related thereto from Col. 5, line 9-Col. 6, line 55; Col. 33, line 56-Col. 34, line 36 against Claim 24. With specific reference to the language of Claim 24, Appellants acknowledge that Fries teaches a receiving component for receiving an input stream from said broadcast location. However, Appellants disagree with the Examiner's conclusion that Fries teaches a processing component for identifying cyclic secondary content in said input stream and for handling said secondary content. The Fries passages teach that the components of the set-top box are unmodified from the prior art (Col. 5 line 14) other than by software modifications for data handling. None of the functionality described from Col. 5, line 9-Col. 6, line 55 includes any discussion of the set-top box being adapted to identify cyclic secondary content in an input stream and to handle the secondary content. Fries does teach storing incoming signals, but does not expressly teach at least one buffer location for receiving secondary content of said input stream from a processing component and for buffering the secondary content. Further,

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while Fries does teach that information is displayed to a user on the user's television, Fries does not teach or suggest that its system has a display component for displaying primary content from the input stream and for receiving secondary content from at least one buffer location and displaying the secondary content. Fries uses meta-data for display of its page images, but does not teach or suggest the display of meta-data. The claim further recites that the processing component comprises means for extracting control information from the input stream and for handling said secondary content based on said control information. The passages cited by the Examiner do not teach a processing component having means for extracting control information from an input stream and for handling cyclically delivered secondary content based on the control information.

"To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim." Karsten Mfg. Corp. V. Cleveland Golf Co., 242 F. 3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). Since Fries does not include every

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element and limitation of the claimed invention, Appellants contend that Fries does not anticipate the invention as set forth in Claim 24 and Claim 26 which depends therefrom and respectfully request reversal of the rejections thereof.

**Dependent Claim 26**

Claim 26 recites the apparatus of Claim 24 additionally comprising a request component for generating a request for retransmission of said secondary content from said broadcast location.

The Examiner rejected Claim 26 as "met as previously discussed with respect to claims 3-10". Appellants rely on the discussions set forth above with respect to Claim 24 and Claims 3-10 in concluding that Fries does not teach or suggest a request component for generating a request for retransmission of secondary content from said broadcast location.

Accordingly, Appellants request reversal of the rejection of Claim 26.



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**CONCLUSION**

Appellants respectfully assert that the Examiner has erred in rejecting Claims 1-24 and 26. Appellants request that the decision of the Examiner be overturned by the Board and that the claims be passed to issuance.

Respectfully submitted,  
O. Casile, et al

By: /Anne Vachon Dougherty/  
Anne Vachon Dougherty  
Registration No. 30,374  
Tel. (914) 962-5910

APPENDIX OF CLAIMS

1. A method for providing secondary content related to primary content in a broadcast stream comprising the steps of:

obtaining secondary content which relates to the main primary content;

creating a schedule for cyclic delivery of said secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content; and

cyclically delivering said secondary content based on said schedule.

2. The method of Claim 1 wherein said scheduling comprises creating a schedule for a first delivery of said secondary content prior to delivery of the primary content and at least one successive delivery of said secondary content after commencement of delivery of the primary content.

3. The method of Claim 2 further comprising dynamically modifying said schedule.

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4. The method of Claim 3 wherein said dynamically modifying the schedule comprises adjusting the schedule based on viewer interaction with said secondary content.

5. The method of Claim 1 further comprising generating at least one viewer request for retransmission automatically at viewer's equipment.

6. The method of Claim 5 further comprising receiving said at least one viewer request for retransmission of said secondary content and responding to said at least one viewer request.

7. The method of Claim 5 wherein the automatic generating of at least one viewer request for retransmission from viewer's equipment comprises generating at least one viewer request for retransmission based on at least one of viewer profile information and viewer interaction.

8. The method of Claim 6 wherein said responding to said at least one viewer request for retransmission comprises rebroadcasting the secondary content.

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9. The method of Claim 8 further comprising counting the number of viewer requests for retransmission of secondary content and wherein said rebroadcasting is conducted upon receipt of a threshold number of viewer requests for retransmission.

10. The method of Claim 6 wherein said responding to said at least one viewer request comprises narrowcasting the secondary content.

11. The method of Claim 1 additionally comprising displaying notification data for notifying the viewer of said delivering of secondary content.

12. The method of Claim 1 wherein the transport mechanism for said primary content is an analog television broadcast stream, and the transport mechanism for the secondary content comprises a vertical blanking interval within said analog television broadcast stream.

13. The method of Claim 1, wherein the transport mechanism for said primary content is a digital television broadcast stream, and the transport mechanism for the secondary

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content is an additional data stream within said digital television broadcast stream.

14. The method of Claim 1, wherein the secondary content comprises content for use by an interactive television application.

15. The method of Claim 1 wherein the secondary content comprises an interactive television application.

16. The method of Claim 1 additionally comprising providing control information with said secondary content.

17. The method of Claim 16 wherein said providing control information comprises including at least one of a unique identifier for said secondary content, an identification of said primary content to which the secondary content pertains, scheduling information for future broadcasting of secondary content, and timing information regarding relating said secondary content to said primary content.

18. The method of Claim 5 further comprising selectively transmitting said at least one viewer request.

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19. A system for providing secondary content related to primary content in a broadcast stream comprising:  
an authoring station for creating a schedule for cyclic delivery of said secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content; and  
a broadcast component for cyclically delivering said secondary content based on said scheduling.

20. The system of Claim 19 wherein said broadcast component further comprises means for generating at least one additional retransmission of said secondary content in response to at least one request.

21. The system of Claim 20 wherein said means for generating at least one additional retransmission comprises means for transmitting said secondary content over a telephone transmission channel.

22. The system of Claim 20 wherein said means for generating at least one additional retransmission comprises means for transmitting said secondary content over a coaxial cable.

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23. The system of Claim 20 wherein said means for generating at least one additional retransmission comprises means for transmitting said secondary content over a wireless return channel.

24. Apparatus at a viewer location for providing display of primary content and secondary content related to said primary content which is broadcast from a broadcast location comprising:

- a receiving component for receiving an input stream from said broadcast location;

- a processing component for identifying cyclic secondary content in said input stream and for handling said secondary content;

- at least one buffer location for receiving said secondary content of said input stream from said processing component and for buffering said secondary content; and

- a display component for displaying said primary content from said input stream and for receiving said secondary content from said at least one buffer location and displaying said secondary content;

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wherein said processing component comprises means for extracting control information from said input stream and for handling said secondary content based on said control information.

25. (canceled)

26. The apparatus of Claim 24 additionally comprising a request component for generating a request for retransmission of said secondary content from said broadcast location.

27-30. (canceled)



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**EVIDENCE APPENDIX**

There is no additional evidence for this matter.

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**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.